Federal Court Cour fédérale

Date: 20200224

Docket: T-491-17

Citation: 2020 FC 290

Montreal, Quebec, February 24, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

TAMBA THOMAS

Applicant

and

MINISTER FOR PUBLIC SAFETY AND EMERGENCY PREPAREDNESS (MPSEP)

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Tamba Thomas (the Applicant) is a diamond merchant who lives in Australia. He seeks to overturn a decision regarding the terms on which the Minister for Public Safety and Emergency Preparedness (the Respondent) will return diamonds valued at $19,800 that were seized from him at the Canadian border. He says he was acquitted of all criminal charges relating to his attempt to bring the diamonds into Canada, and the judge ordered that the diamonds be

released to him. He claims that the Respondent is not respecting that order by imposing additional terms that he is unable to meet.

[2] The Respondent has indicated it is fully prepared to return the diamonds to him, but that since they were seized at the border, and he did not have the necessary paperwork to legally import them into Canada, he must take the diamonds directly out of the country. However, the Respondent states that it has no authority to issue him the necessary documentation to export the diamonds, which are subject to a specific legislative regime, since he did not legally import the diamonds into Canada.

[3] The Applicant argues that this puts him into an impossible situation. He cannot import the diamonds into Canada, and he fears that without the appropriate paperwork, his diamonds will be seized if he exports them.

[4] The Applicant believes that he has been put through both administrative and criminal proceedings for no good reason, and he argues that his diamonds should be returned to him without conditions. He mistakenly brought the diamonds with him when he came to Canada to retrieve some other diamonds he had lawfully imported. He immediately acknowledged his mistake, but instead of dealing with this as a minor administrative matter, the Respondent escalated it to a formal administrative seizure.

[5] In addition, the Applicant was charged with offences for breaching the *Customs Act*, RSC 1985, c 1 (2nd Supp) [the *Act*], as well as the *Export and Import of Rough Diamonds Act*, SC 2002, c 25 [the *Diamonds Act*]. The judge accepted that the Applicant had made an honest mistake and he was acquitted of all of these charges. The judge ordered that the diamonds be

returned to him. The Applicant submits that the Respondent is not abiding by this order, and is not facilitating the return of the diamonds in a manner that would allow him to deal with them lawfully, by either importing them into Canada or exporting them elsewhere, because it will not issue the appropriate certificate to him.

[6] The Respondent claims that it is simply following the *Act* and the *Diamonds Act*. The Applicant is responsible for the situation he finds himself in because he did not follow the law when he brought the rough diamonds from the United States into Canada.

[7] This case has a long procedural history, although the underlying sequence of events is relatively straightforward. In order to understand the basis for the Applicant's complaints, it is necessary to review the history of the matter as well as the legal and policy framework, including the Kimberley Process, which is an international agreement that seeks to stem the trade in "conflict diamonds." This will provide the necessary foundation for the analysis of the main arguments of the Applicant.

[8] Unlike the situation in most applications for judicial review, a true appreciation of the core complaint of the Applicant requires a consideration of the decision being challenged in the context of the events which preceded it (which is usual) and the subsequent events (which is not). In the particular circumstances of this case, and given that the Applicant represents himself and the case was argued on this basis by both parties, it is in the interests of justice to take into account certain key events which occurred after the decision being challenged.

[9] The Applicant represented himself in these proceedings. It should be noted at the outset that the Respondent objected to certain passages in the affidavit filed by the Applicant in support

of his application for judicial review, because they contain opinions and arguments rather than simply recounting facts within his personal knowledge. To the extent that certain paragraphs of the affidavit strayed beyond what is permitted by the *Federal Courts Rules*, SOR/98-106, or seek to introduce new evidence, I find them to be inadmissible (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22). This is discussed in more detail below.

[10] In addition, the Applicant has brought a motion seeking a confidentiality order to safeguard his identity and confidential information in the record. This is dealt with at the end of these reasons.

[11] For the following reasons, this application for judicial review is dismissed. The application for a sealing order is also dismissed, but certain of the materials filed by the Applicant will be removed from the Court record because they are inadmissible on an application for judicial review.

II. Context

[12] The Applicant is a diamond merchant and a resident of Australia. He wanted to expand his business into North America, so he brought diamonds, with the proper paperwork, into Canada and the United States. He also arranged to ship other diamonds to both countries, again with the necessary paperwork. The Applicant soon discovered that the market in Canada did not appear to be as promising as the one in the United States, so he decided to focus his efforts there. He decided to export some of the diamonds he had in Canada to the United States. The Applicant

obtained the necessary export permits, known as Kimberley Process Certificates (KPCs), and then made plans to come to Canada to retrieve the diamonds.

[13] The Kimberley Process is an international arrangement involving governments, industry and civil society that seeks to stem the flow of conflict diamonds, sometimes called blood diamonds. These are diamonds that certain groups have sold to finance violence, including conflicts aimed at undermining legitimate governments. In order to prevent this, the Kimberley Process seeks to control the flow of diamonds and to ensure that all diamonds bought and sold in member states are from legitimate sources. Canada is a member of this initiative, as are Australia, Sierra Leone, and the United States, the countries at play in this case. (A description of the genesis of this, and the Canadian legislation is set out in the Affidavit of Mr. Schatz from the Kimberley Process Office of Canada at Natural Resources Canada; see also the Legislative Summary for Bill C-14: The Export and Import of Rough Diamonds Act, by Jay Sinha, Library of Parliament, 28 October 2002, revised 8 January 2003.)

[14] In Canada, the initiative is administered by the Kimberley Process Office of Canada (KPOC) in Natural Resources Canada. Two core elements of the initiative are that KPCs must be obtained from a participating country for all shipments of rough diamonds entering or leaving a country, which certify that the diamonds are "conflict free." In addition, such diamonds must be transported in tamper-resistant containers. In Canada, these requirements are embodied in the *Diamonds Act* and the *Export and Import of Rough Diamonds Regulations*, SOR/2003-15 [*Diamonds Regulations*].

[15] On November 11, 2009, the Applicant entered Canada from the United States at the Lacolle (Quebec) border crossing on a Greyhound bus. He indicated to the Canada Border

Services Agency (CBSA) officer that he was a diamond merchant. When asked if he was carrying any valuable goods or diamonds, he replied, “no.” The officers decided to search his backpack, and they discovered a small plastic bag containing four uncut – or rough – diamonds, totalling 28.13 karats. The diamonds were seized for not having been reported, contrary to section 12 of the *Act*, and a number of other documents he was carrying, including three KPCs, were retained for further investigation. The diamonds were later assessed by a gemologist, who determined they were worth $19,800.00 CAD.

[16] Based on this assessed value, the CBSA officer calculated the terms of release for the seized rough diamonds in the amount of $7,920.00 CAD, or 40% of their value. A notice to this effect was provided to the Applicant on December 26, 2009.

[17] The Applicant challenged the seizure through an administrative Ministerial review process, claiming that he had simply forgotten about the diamonds in his backpack and had not intended to bring them to Canada. He said that he is an honest and law-abiding person, and pointed to the fact that he had obtained the appropriate KPCs to import his other diamonds into Canada, and that he had subsequently come to Canada to export those diamonds to the United States, again with the appropriate KPCs. On November 24, 2011, a Minister’s delegate determined, pursuant to sections 131 and 133 of the *Act*, that a contravention of the *Act* had occurred and that the diamonds could be returned to the Applicant upon receipt of an amount of $4,950.00 to be held as forfeit.

[18] However, because the diamonds were then being held as evidence during the criminal investigation, they could not be returned to the Applicant.

[19] The Applicant launched an action under section 135 of the *Act*, disputing the seizure of the diamonds, the imposition of the penalty, and the Minister's failure to release the diamonds. On August 28, 2013, this Court dismissed the action on the basis that a challenge to the conditions set for release of goods seized under the *Act* had to be brought by means of an application for judicial review pursuant to section 133 of the *Act* (Court File Number T-655-12). There was no appeal of that decision and no judicial review proceedings were launched at that time.

[20] In parallel with the administrative process, on May 10, 2011, criminal proceedings were commenced against the Applicant for failing to report the rough diamonds when he entered Canada, in breach of sections 153(a), 159 and 161 of the *Act*. In addition, he was charged with violating subsection 14(1) of the *Diamonds Act* because the diamonds were not in a tamper-resistant container as defined by section 9 of the *Diamonds Regulations*, and were not accompanied by a KPC.

[21] On September 2, 2016, the Applicant was acquitted of all charges. The judge hearing the criminal matter determined that the Applicant had raised a reasonable doubt as to his guilt because he reasonably believed in a mistaken set of facts, pursuant to the doctrine of strict liability offences established in *R v Sault Ste Marie*, [1978] 2 SCR 1299. Following a discussion with counsel and Mr. Thomas as to the terms of the return of the diamonds, including some discussion of the requirements of the *Diamonds Act*, the judge ordered that the diamonds and other documents seized should be released to the Applicant.

[22] On October 19, 2016, the Applicant contacted the CBSA officer who had handled the seizure to ask that the diamonds be returned to him. The officer indicated he would verify the

requirements for the release of the diamonds. In an undated letter attached to an e-mail dated October 22, 2016, the officer informed the Applicant that the diamonds were "ready to be released for exportation." The letter continued:

> Since you do not have an American Kimberly [*sic*] export certificate, I have consulted the recourse division and the terms of release for exportation have been set to $4950.00 Canadian. The goods are currently at the port of entry of St-Bernard-de-Lacolle, Quebec and will need to be exported immediately after release…
>
> You are responsible for the exportation of the goods to the United States of America; the Canada Border Services Agency is not accountable once the goods are released.

[23] This is the decision that the Applicant challenges in this application for judicial review. However, as noted above, it is necessary to consider certain events that followed this decision in order to grasp the core of the Applicant's complaint.

[24] After the Applicant received the October 22, 2016 e-mail and letter, he had a series of exchanges with CBSA officials. For the purposes of this account, it is sufficient to indicate that during the course of these exchanges the following points become clear:

a) CBSA officials indicated that the diamonds had never been lawfully imported into Canada, because they were seized at the border and the Applicant did not have the necessary KPC certificate to import them;

b) The Applicant claimed that he was told during a phone conversation with a CBSA official that he could choose to keep his goods in Canada or do whatever else he wanted. This was denied by the official; and,

c) The Applicant asked for the return of his diamonds and relief from the penalty, since he had been acquitted of all criminal charges and had been put through a lengthy administrative process.

[25] The Applicant sought the assistance of the KPOC, and on December 23, 2016, they sent a letter to respond to his request. The essential terms of the letter can be summarized as follows:

a) The KPOC agreed with CBSA that the rough diamonds had never been lawfully imported into Canada because they were seized at the border and were not accompanied by a valid KPC;

b) The KPOC could not issue a Canadian KPC for the rough diamonds because they did not lawfully enter Canada;

c) As a result, when the rough diamonds are released by CBSA, they cannot be exported and must be returned to the United States, the country from which they came;

d) The KPOC had contacted officials in the United States, who indicated that the rough diamonds could not be accepted back into their territory because they left the United States without proper authority – there was no American KPC issued for their export. The KPOC indicated that American authorities had stated that if the diamonds were returned to the United States they would be confiscated.

[26] From the Applicant's perspective, this summarizes the dilemma in which he finds himself. The application for judicial review is technically a challenge to the decision of the CBSA officer in the e-mail of October 22, 2016, setting out the terms of release of the seized diamonds. Before this Court, the Applicant contends that the decision is unreasonable, that the CBSA officer had a reasonable apprehension of bias, and requests the diamonds be released

unconditionally. The Applicant sought a number of orders relating to these allegations. The core of his complaint, however, is that having been acquitted of all criminal charges for violating the *Act* and the *Diamonds Act*, he is now put into a situation where he cannot obtain the documents he needs to either bring the diamonds into Canada or to export them; in essence, what he wants is the return of his diamonds with the necessary KPCs so that he can either sell them in Canada or export them elsewhere.

[27] Two subsequent developments complete the narrative. First, since the Respondent did not appeal the Applicant's acquittal of the charges, it has indicated it will no longer impose the monetary penalty pursuant to the administrative seizure. The Applicant can, therefore, obtain his diamonds without having to pay any penalty. Second, the Respondent advised the Applicant on June 12, 2017, that he can take the diamonds to any other country – he does not have to bring them back to the United States– as long as he meets the legal requirements to do so.

III. Issues and Standard of Review

[28] The issues in this case can be grouped into three questions:

A. Is the decision dated October 22, 2016, reasonable? This would include both the terms of release and the related question of the issuance of the KPC.

B. Has the Applicant demonstrated a reasonable apprehension of bias on the part of the CBSA officer?

C. Does the Court have jurisdiction to issue the other related orders requested by the Applicant?

[29] The standard of review on the first issue is reasonableness. This was established in previous cases (*Gagliano v Goodale*, 2018 FC 820 at para 70; *Chen v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 477 at para 19), applying the approach set out in *Dunsmuir v New Brunswick*, 2008 SCC 9. The recent decision of the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] updates and clarifies the law on standard of review, and it confirms that reasonableness is the presumptive standard. None of the exceptions applies here. I will be applying the *Vavilov* framework to the analysis of this issue.

[30] It was not necessary in this case to request further submissions from the parties on the standard of review or its application. As noted by the Supreme Court in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 24, no unfairness arises from this "as the applicable standard of review and result would have been the same under the *Dunsmuir* framework."

[31] The second issue involves a claim that the CBSA officer was biased against the Applicant. This is a matter of procedural fairness that is reviewed on a standard that most closely aligns with the correctness standard (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Ramos v Canada (Public Safety and Emergency Preparedness*, 2019 FC 844 at para 19.

[32] As will be explained below, it is not necessary to deal with the third issue.

IV. Analysis

A. *Is the decision dated October 22, 2016, reasonable?*

[33] The Applicant submits that the October 22, 2016 decision setting the terms for release of his rough diamonds is unreasonable. He originally challenged this decision on four grounds: (i) the imposition of the penalty of $4,950; (ii) the "contempt" of the Respondent of the Order of Judge Godri of the Provincial Court of Quebec that acquitted him of the charges and ordered the release of the diamonds and documents; (iii) the determination that the goods had not been imported into Canada because they were seized at the border; and (iv) the determination that the diamonds could only be exported to the United States. As noted above, the first and fourth grounds are no longer in issue since the Respondent has waived the penalty and indicated that the Applicant could export the diamonds to any country.

[34] The analysis of the other grounds requires a consideration of the legal framework for the decisions, and an assessment of the reasons given for the decision.

(1) Legislative Framework

[35] The starting point is subsection 12(1) of the *Act*, which provides that "all goods that are imported shall… be reported at the nearest customs office designated for that purpose that is open for business." Subsection 110(1) of the *Act* provides that "[a]n officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of goods, seize as forfeit… the goods…" This was the legal basis for the original seizure of the goods at the border, including the rough diamonds and the other material.

[36] Pursuant to subsection 117(1) of the *Act*, following an appraisal of the seized rough diamonds, the original terms of release were fixed at $7,920.00 CAD, which was 40% of the appraised value. The Applicant appealed this pursuant to subsection 129(1) of the *Act*, and on October 25, 2011, an adjudicator determined that under section 131 of the *Act* there had been a contravention of the *Act* in respect of the goods that were seized. Under section 133, the terms of release were set at $4,950.00 to be held as forfeit. This penalty is no longer at issue.

[37] In addition, since the seizure involved diamonds and several KPCs that were in the possession of the Applicant when he crossed the border, the CBSA official contacted the KPOC. The relevant provisions of the *Diamonds Act* state:

Exporting Rough Diamonds	**Exportation de diamants bruts**
Requirements for exporting rough diamonds	**Obligations**
8 (1) Every person who exports rough diamonds must ensure that, on export, they are in a container that meets the requirements of the regulations and are accompanied by a Canadian Certificate.	**8 (1)** L'exportateur de diamants bruts doit veiller à ce que, lors de l'exportation, ceux-ci soient accompagnés d'un certificat canadien et soient dans un contenant conforme aux normes réglementaires.
…	[…]
Importing Rough Diamonds	**Diamants bruts importés**
Requirements for importing rough diamonds	**Obligation relative à l'importation de diamants bruts**
14 (1) Every person who imports rough diamonds must ensure that, on import, they are in a container that meets the requirements of the regulations and are accompanied by a Kimberley Process Certificate that	**14 (1)** L'importateur de diamants bruts doit veiller à ce que, lors de l'importation, ceux-ci soient dans un contenant conforme aux normes réglementaires et soient accompagnés d'un certificat du Processus de Kimberley qui remplit les conditions suivantes :
(a) was issued by a participant;	**a)** le certificat a été délivré par un participant;

(**b**) has not been invalidated by the participant; and

(**c**) contains accurate information.

…

Duration of detention

27 (1) Subject to subsection (3), rough diamonds or other things seized may not be detained after

(**a**) an investigator determines that they meet the requirements of this Act; or

(**b**) the expiry of a period of 180 days after the day of their seizure.

Return of rough diamonds if no proceedings

(**2**) If no prosecution under this Act has been instituted on the expiry of the 180-day period, the rough diamonds or other things seized must be returned to their owner or the person having the possession, care or control of them at the time of their seizure.

Exception

(**3**) If a prosecution under this Act is instituted, the rough diamonds and other things seized may be detained until the proceedings are concluded.

Application for return

(**4**) If a prosecution under this Act is instituted and rough diamonds or other things have been seized but not forfeited, their owner or the person having the possession, care or control of them at the time of their seizure may apply to the court

b) il n’a pas été invalidé par le participant l’ayant délivré;

c) les renseignements qu’il contient sont exacts.

[…]

Durée de la rétention

27 (1) Sous réserve du paragraphe (3), les diamants bruts ou les autres objets saisis ne peuvent être retenus soit après la constatation, par l’enquêteur, de leur conformité à la présente loi, soit après l’expiration d’un délai de cent quatre-vingts jours à compter de la date de la saisie.

Restitution

(**2**) Si, à l’expiration du délai de cent quatre-vingts jours, aucune poursuite pénale n’a été engagée sous le régime de la présente loi, les diamants bruts ou les autres objets saisis doivent être restitués à leur propriétaire ou à la dernière personne à en avoir eu la possession ou la garde.

Cas de poursuite

(**3**) En cas de poursuite pénale engagée sous le régime de la présente loi, la rétention des diamants bruts ou des autres objets saisis peut se prolonger jusqu’à l’issue définitive de l’affaire.

Demande de restitution

(**4**) Si les diamants bruts ou les autres objets saisis n’ont pas été confisqués, leur restitution peut être demandée au tribunal saisi de l’affaire par leur propriétaire ou par la dernière personne à en avoir eu la possession ou la garde.

before which the proceedings are being held for an order that the rough diamonds or other things be returned.

Order

(5) After hearing the application, the court may order the rough diamonds or other things seized to be returned if the court is satisfied that sufficient evidence exists or may reasonably be obtained without further detaining them.

Ordonnance de restitution

(5) Le tribunal peut faire droit à la demande s'il est convaincu qu'il existe ou peuvent être obtenus suffisamment d'éléments de preuve pour rendre inutile la rétention des diamants bruts ou des autres objets saisis.

Return of rough diamonds on acquittal

(6) If the accused is acquitted, the court may order that the rough diamonds or other things seized be returned to their owner or the person having the possession, care or control of them at the time of their seizure.

Restitution

(6) Si l'accusé est acquitté, le tribunal peut ordonner que les diamants bruts ou les autres objets saisis soient restitués à leur propriétaire ou à la dernière personne à en avoir eu la possession ou la garde.

[38] The *Diamonds Regulations* provide the requirements for tamper-resistant containers for import or export of rough diamonds:

Containers

9 (1) A container to be used for the export or import of rough diamonds must be so constructed that the container, when sealed, cannot be opened without showing evidence of having been opened.

(2) A container in which rough diamonds are exported must

(a) be sealed with a seal that bears a seal number listed on the accompanying Canadian Certificate; and

(b) bear the serial number of the accompanying Canadian Certificate.

Contenants

9 (1) Tout contenant destiné à l'exportation ou l'importation de diamants bruts doit être fabriqué de manière que, une fois scellé, il ne puisse être ouvert sans que cela soit apparent.

(2) Tout contenant utilisé pour l'exportation de diamants bruts :

a) est scellé au moyen d'un sceau dont le numéro figure sur le certificat canadien;

b) porte le numéro de série du certificat canadien.

(2) Reasons for the decision

[39] In this case, the reasons for the decision under review include the undated letter attached to the e-mail of October 22, 2016, the subsequent exchanges with the CBSA and KPOC officials that confirmed and clarified certain aspects of this decision, as well as the determinations that the penalty would no longer be imposed and that the Applicant could take the diamonds to any country, not only the United States. These form the basis for the Applicant's challenge to the decision.

[40] The essential elements of the decision, based on the documents cited above, are:

a) The goods that were seized under the *Act* are ready to be released for exportation;
b) They are being held at the border crossing at St-Bernard-de-Lacolle, Quebec;
c) The goods will need to be exported from Canada immediately after their release;
d) They can be taken to any other country, but cannot enter Canada; and,
e) Since the Applicant did not possess a valid American KPC when he arrived with the diamonds at the border, and therefore did not lawfully import them into Canada, it is not possible for the KPOC to issue Canadian KPCs to accompany the diamonds when they are exported.

(3) Position of the Applicant

[41] The Applicant contends that this decision is both contrary to the Order of Judge Godri in the criminal proceedings, and unreasonable. He argues that the judge who acquitted him of all charges had the authority to order the release of the diamonds pursuant to section 27 of the *Diamonds Act*. Since there was no appeal from that Order, it is final and must be complied with.

The Applicant submits that section 27 is a clear directive that the diamonds can be released to him if a judge so orders, regardless of whether they were imported in compliance with the *Diamonds Act* or not.

[42] In support of this conclusion, the Applicant argues that the provisions of the *Diamonds Act* must be interpreted in a manner consistent with Canada’s obligations under the Kimberley Process. He notes that section V(f) of the Kimberley Process Certification Scheme provides that participants must “cooperate with other Participants to attempt to resolve problems which may arise from unintentional circumstances and which could lead to non-fulfilment of the minimum requirements of the issuance or acceptance of the Certificates…”

[43] He argues that his situation fits exactly into this category. He was acquitted of the criminal charges because the judge accepted that his non-compliance was unintentional. The judge ordered the diamonds to be returned to him. As the Applicant states in his written submissions: “The refusal of National Revenue Canada [*sic*] to issue a complying certificate to the Applicant defies the core requirements within the founding ethos of the KPC process itself. Unintentional non-fulfilment should not be met with the same consequences as intentional non-fulfilment.”

[44] On the question of whether the diamonds were actually imported into Canada, the Applicant claims that this has already been answered in the criminal proceedings, noting that the judge stated, “[h]e is also charged with having imported into Canada four rough diamonds…”

[45] Finally, on this question, the Applicant originally argued that the requirement that the diamonds be released at the border crossing point, and that he must then take them back to the

United States, is inconsistent with the terms of the *Diamonds Act* and the Order of Judge Godri. He submitted that the Respondent is inducing him to breach American law by imposing these stringent and unnecessary requirements. In light of the change in the Respondent's position on this point, the Applicant's complaint still stands – without the necessary KPC he would be in breach of the law by bringing the diamonds into any participating state.

[46] The Applicant argues that the *Diamonds Act* should be interpreted in a coherent and common sense manner. For example, the drafters would have realized that in any case in which diamonds are seized and a criminal prosecution is launched, a valid KPC for those diamonds would expire before the conclusion of that process since the KPCs are valid for only six months. It cannot have been the intention of Parliament that upon acquittal, the owner of the seized diamonds would be placed in the impossible situation of being denied a new KPC for the seized goods. That is the situation in which the Applicant has been placed, and the decision of the Respondent is therefore unreasonable.

(4) Position of the Respondent

[47] The Respondent argues that the Applicant is the author of his own misfortune, and the decision is reasonable because: (i) the administrative civil sanctions imposed on the Applicant are distinct and separate from the criminal proceedings; (ii) the Order of Judge Godri that the diamonds be released to the Applicant does not dispense with his obligation to comply with the requirements of the *Diamonds Act*; and (iii) the Applicant's interpretation of the requirements for release of seized goods under the *Diamonds Act* defies common sense and does not accord with the proper interpretation of the provision.

[48] The Respondent submits that the decision complies with the *Act*, the *Diamonds Act*, and the *Diamonds Regulations*. It is fully prepared to release the diamonds to the Applicant, and is no longer imposing any financial penalty. All that is required is for the Applicant to comply with the provisions of the *Diamonds Act* because the goods he attempted to bring into Canada are rough diamonds. The terms that are being imposed on him are not terms of release, they are simply the result of the application of the *Diamonds Act*. The Respondent argues that the situation is analogous to the release of an automobile that has been seized. The terms of release do not absolve the owner from abiding by the laws regarding vehicle registration or insurance.

[49] On the question of compliance with the Order of Judge Godri following the Applicant's acquittal of the criminal charges, the Respondent submits that the findings in the criminal proceedings are not binding in regard to the separate and distinct civil administrative sanctions. The Applicant failed to comply with the self-reporting obligation imposed by the *Act*. As recognized by the Supreme Court of Canada in *Martineau v MNR*, 2004 SCC 81, Canada has the right to control both who and what enters its boundaries and, in order to attain these objectives, Parliament has adopted the civil and penal mechanisms in the *Act* to enforce compliance with the self-reporting system.

[50] The Respondent contends that the jurisprudence confirms that the findings in the criminal proceeding are not binding in the administrative proceedings. Therefore the Applicant's acquittal of the criminal charges does not affect the requirements set out in the *Diamonds Act*. An interpretation of the provisions regarding the release of seized goods that gave effect to such an approach would be contrary to common sense, and the intention of Parliament. The text, context, and purpose of the *Diamonds Act* and *Regulations* are all consistent in requiring strict

compliance with the requirements for documentation through the KPC, and the need for the rough diamonds to be transported in tamper-resistant containers. These obligations lie at the heart of the Kimberley process, and any interpretation that would create an exemption from them for anyone who is acquitted of a criminal charge under the *Act* or *Diamonds Act* is contrary to common sense and inconsistent with the clearly expressed intention of Parliament.

[51] The Respondent submits that the decision is reasonable; it simply reflects the ongoing obligation on the Applicant and the Respondent to comply with the requirements of the *Diamonds Act*. To the extent the Applicant finds himself in a difficult situation regarding the diamonds, he cannot complain because he is the author of his own misfortune.

(5) Discussion

[52] The Applicant's arguments on this issue all stem from the decision of Judge Godri acquitting him of the criminal charges and ordering the diamonds and documents to be released to him. Based on this, the Applicant submits that the conditions the Respondent has attached to the release of the diamonds are unreasonable, because they are inconsistent with the terms of that Order, and not required by a common sense and practical interpretation of the *Diamonds Act*.

[53] I am not persuaded.

[54] First, decisions of this Court and the Federal Court of Appeal have confirmed that administrative civil sanctions are distinct and separate from criminal proceedings under the *Act*. In *Time Data Recorder International Ltd v Canada (National Revenue)* (1997), 211 NR 229, [1997] FCJ No 475 (QL) (FCA), the case involved both civil and criminal proceedings relating to the failure to declare goods which were being imported into Canada. The criminal charges

against the company were dismissed, and it argued that the civil penalty that was imposed should be overturned because the Minister was bound by the findings of the criminal court. The Federal Court of Appeal rejected this argument, noting that seizure and forfeiture under the *Act* were civil proceedings and penalties, and judgments in criminal courts are not *res judicata* in subsequent civil trials, because the parties are generally not the same, and the questions to be resolved and the burden of proof are different in the two proceedings.

[55] This decision was cited with approval by Justice Anne Mactavish, in *Kennedy v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 1196 [*Kennedy*], which involved criminal charges and administrative civil penalties relating to the failure to declare a vehicle purchased in the United States, which the applicant was bringing into Canada. Mr. Kennedy was charged with several criminal charges relating to these events, but he was acquitted of all of these charges. He argued that this meant that the civil penalty should not be enforced, relying on the principles of issue estoppel, *res judicata*, and abuse of process. Mr. Kennedy submitted that the findings of fact made in the criminal proceedings were binding in subsequent proceedings involving the same facts.

[56] Justice Mactavish rejected this argument:

> [65] Dealing with this last argument first, it is clear that a contravention finding under section 12 of the *Customs Act* is a civil proceeding and as such is quite different from a criminal charge relating to unlawful importation under the *Criminal Code*. The parties are not the same, different issues arise, the onus of proof is different and a different standard of proof applies (proof on a balance of probabilities in this case and proof beyond a reasonable doubt in the criminal case). There are, moreover, different requirements insofar as the question of intent is concerned. The evidence that was before the Provincial Court judge may also have been different than the evidence that was before me.

> [66] As a consequence, I am not persuaded that I am bound by the findings of fact made by the trial judge in Mr. Kennedy's criminal trial: see *Time Data Recorder International Ltd. v. Canada (Minister of National Revenue,* (1997), 211 N.R. 229, 2 T.T.R. (2d) 122 (F.C.A.) at paras. 10-15.

[57] These authorities are both directly on point and persuasive. In this case, moreover, the decision of Judge Godri acquitting the Applicant of the charges and directing the release of the seized goods did not in any way address the question of whether the Applicant was otherwise in compliance with the requirements of the *Diamonds Act* or *Regulations*. For example, there is no finding that the Applicant was in possession of a valid KPC for these diamonds, or that they were transported in a tamper-resistant container.

[58] It should be recalled that when he arrived at the Canadian border, the Applicant was found to be in possession of four rough diamonds worth $19,800 in a plastic bag, and that he was unable to produce a valid KPC for them. He explained that he had not meant to bring these diamonds with him, but rather he had meant to leave them in the United States. He added that he had complied with the legal requirements in bringing them into the United States.

[59] The Applicant appears to have initially claimed that one of the KPCs that was seized related to the diamonds found in his bag, but later on he asserted that the Certificate for these diamonds was a KPC issued by Sierra Leone bearing number SL003031. The difficulty for the Applicant is that this particular KPC did not authorize him to export the diamonds to the United States; instead, it was for the export of the diamonds to Australia. The Applicant claims that this is a simple administrative error by authorities in Sierra Leone, but there is no evidence in the record to suggest that the Applicant has made any effort to obtain a corrected document from the relevant authorities in Sierra Leone.

[60] This underlines why the findings in the criminal proceedings are not binding or authoritative in regard to subsequent and separate civil administrative proceedings. The Order of Judge Godri that the seized diamonds and documents are to be released to the Applicant was made pursuant to subsection 27(6) of the *Diamonds Act*, and the decision of October 22, 2016, complies with this Order to the extent that it clearly indicates a willingness on the part of the Respondent to release the diamonds to the Applicant. To this extent, the Respondent is in compliance with the Order of Judge Godri.

[61] The Applicant's argument that the Order somehow supersedes the requirements of the *Diamonds Act* or *Regulations* is also not persuasive. Once again, the factual context sets the foundation for the analysis. The Applicant was acquitted of criminal charges, and obtained an Order that his diamonds and some documents should be returned to him. He now argues that any requirement over and above that is neither legally necessary nor consistent with the terms of that Order. I disagree.

[62] It is not necessary to repeat the analysis of the scope of the Order. In regard to the requirements of the *Act*, the *Diamonds Act*, and the *Diamonds Regulations*, it is necessary to interpret the provisions in accordance with the accepted approach to statutory interpretation, which involves examining the text, context and purpose of the provisions.

[63] The full text of the relevant provisions is cited above. The relevant provisions are simple, clear, and mandatory – they do not leave room for discretion. In particular, subsection 14(1) of the *Diamonds Act* provides that, "(e)very person who imports rough diamonds must ensure that, on import, they are in a container that meets the requirements of the regulations and are accompanied by a Kimberley Process Certificate that… (c) contains accurate information."

Section 9 of the *Regulations* sets the requirements for a tamper-resistant container, in equally clear terms. Similarly, the *Act* requires persons arriving at the Canadian border to “answer truthfully any questions asked by an officer in the performance of his or her duties under this or any other Act of Parliament” (subsection 11(1)), and to report “all goods that are imported” (subsection 12(1)). The texts are clear.

[64] It is important that the release of the goods on acquittal is expressly dealt with in the legislation, in subsection 27(6) of the *Diamonds Act*, cited above. This provision states that upon acquittal “the court may order the rough diamonds or other things seized be returned to their owner…” but it does not purport, directly or indirectly, to alter any of the requirements set by other provisions of the same Act. It is trite law that related provisions in a single statute should be interpreted in a consistent and harmonious manner (R. Sullivan, *Sullivan on the Construction of Statutes* (6th edition, Lexis Nexis 2014), chapter 13).

[65] Furthermore, I agree with the Respondent that the provisions regarding the requirements for importing or exporting rough diamonds set out in the *Diamonds Act* and *Regulations* are legally binding and stand separate and apart from the provision regarding return of seized goods following acquittal.

[66] The context and purpose of these provisions reinforce this conclusion. The genesis of the *Diamonds Act* was described earlier. The *Diamonds Act* and *Regulations* incorporate and give effect to the requirements of the Kimberley Process in Canada. The core document that crystallized the international agreement that launched this initiative, the Kimberley Process Certification Scheme, which was cited by the Applicant in support of his argument, makes it clear that two key components are ensuring strict compliance with the KPC process and the use

of tamper-resistant containers for export or import of rough diamonds. The overall context reinforces the importance of these controls as a mechanism to stem the flow of conflict diamonds and to ensure that the trade in diamonds amongst participant countries involves only conflict-free diamonds. As a significant diamond producing country, Canada has a particular interest in the effective enforcement of these elements of the Kimberley Process, as is reflected in its legislation and regulations.

[67] Turning to the key provisions for the purposes of this case, it is significant that a criminal charge for breach of the statute can arise in many different circumstances. Thus, the return of seized goods following acquittal may or may not relate in any way to an owner's intention to import or export the rough diamonds. In light of this, the purpose of subsection 27(6) is simply to enable a judge to issue an order, following an acquittal, to return the seized property to the owner. The intention is simply to put the person back into the same position they were in prior to the seizure.

[68] I am not persuaded by the Applicant's proposed interpretation of the relevant provisions. In particular, the law does not allow for an interpretation that ignores the plain meaning of the words, based on an assertion of what "common sense" requires, where the suggested reading of the text flies in the face of the text, context, and purpose of the legislation. I agree with the Respondent that the provisions regarding import and export of rough diamonds are separate and distinct from the section that authorizes a judge to order the release of the seized goods back to their owner following an acquittal. Furthermore, there is nothing in the text to support a claim that such an order would modify the other provisions of the legislation or have the effect of exempting an individual from the generally applicable legal requirements. The Applicant's

proposed interpretation is inconsistent with the text, and not supported by the context or purpose of the provisions.

[69] I make no comment on the situation raised by the Applicant where an individual who had a valid KPC for the diamonds at the time of the seizure was denied an updated one following acquittal of criminal charges and an order for the return of the seized goods after expiry of the said KPC. That is simply not the situation here, and so it is neither necessary nor appropriate to comment on it.

[70] Finally, the determination that the rough diamonds were never lawfully imported into Canada is both factually and legally sound, despite the fact that the diamonds have, in fact, been on Canadian soil since their seizure. It is not disputed that the goods were seized at the border crossing; it also is not disputed that the Applicant failed to declare the goods when he arrived at the border, and that they were not in a tamper-resistant container or accompanied by a valid KPC issued by the United States. The Applicant did not meet the requirements for lawfully importing these goods into Canada, under either the *Act* or the *Diamonds Act* and *Regulations*. As a matter of fact, and a matter of law, this determination is reasonable in the circumstances of this case.

[71] The Respondent is now prepared to return the seized diamonds to the Applicant, and that is precisely what the Order of Judge Godri required. In doing so, both the Respondent and the Applicant remain bound by the requirements of the *Diamonds Act* and *Regulations*. To the extent that the October 22, 2016, letter and subsequent exchanges recognize this, the decision is not unreasonable.

[72] For these reasons, I reject the Applicant's arguments on this issue, and I find that the decision being challenged is reasonable.

B. *Has the Applicant demonstrated a reasonable apprehension of bias on the part of the CBSA officer?*

[73] The Applicant has made a number of serious allegations against the CBSA officer who was principally involved in this case, all of which concern a claim that the officer's actions tainted the decision-making process and give rise to a reasonable apprehension of bias.

[74] The test for a reasonable apprehension of bias was stated in *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at p 394:

> [T]he apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. … [The] test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude…"

[75] This test has been applied in relation to claims of bias against judges, members of administrative boards and tribunals, and administrative decision-makers (see *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at para 21 [*Yukon Francophone School Board*]). In all cases, it is acknowledged that allegations of bias or an apprehension of bias are serious and should be based on a solid evidentiary foundation (*R v S (RD)*, [1997] 3 SCR 484 at paras 112-114; *Yukon Francophone School Board* at paras 25-26).

[76] In this case, the Applicant points to a number of interactions with the officer, but I will only address the primary examples. At the outset, I will indicate that I find that there is no

foundation in the evidence for the serious claims made by the Applicant, and I reject them in their entirety.

[77] First, the Applicant points to the appraisals of the diamonds. He notes that the first appraisal, dated November 19, 2009, indicated the market value of the diamonds, and stated, “The quantity of articles correspond, in all, to the documents describing the goods seized in an envelope sealed by the impounding officer.” In a subsequent letter, dated November 30, 2019, which the gemologist describes as an “Addendum” to the earlier report, she indicates that she had examined the KPCs seized with the diamonds, and states that in her view, the diamonds seized did not correspond to those described in the KPCs.

[78] The Applicant argues that this is an indication that the officer induced the gemologist to falsify her report, because he wanted to prevent the return of the diamonds.

[79] The evidence simply does not support such a conclusion. The first report makes a general statement but does not indicate that a detailed or specific examination of the KPCs was done. For the purposes of the administration of the *Diamonds Act*, and given the technical nature of the requirements, it is evident why the officer asked for a supplementary report to examine that specific question. There is no reasonable basis to draw an inference that this is an indication of bias on the part of the officer, in particular given the possibility that the further examination could have confirmed that the diamonds did correspond to one of the KPCs. Had that conclusion been reached by the technical expert, it would have been powerful evidence in support of the Applicant’s explanation for his failure to report the goods. This is not the type of evidence that a reasonably informed person would find supports a claim of a reasonable apprehension of bias.

[80] Similarly, I find the Applicant's claim that the officer's decision to treat the matter as a more serious Level II infraction rather than a simple Level I inadvertent failure to report is not an indication of a reasonable apprehension of bias. This must be viewed in its proper context. The Applicant failed to report that he had rough diamonds in a plastic bag valued at $19,800. It is trite law that reason for the failure to report or the good faith of the importer is irrelevant under the *Act*: see *Kennedy* at para 61. Furthermore, the import and export of rough diamonds is subject to a particular legislative regime, which imposes strict requirements pursuant to Canada's international obligations.

[81] There is nothing in the record to support the Applicant's claim that the officer's decision to treat this as a more serious matter is an indication of bias or sufficient to support a reasonable apprehension of bias. The Applicant relies on the decision in *Shin v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 1106, but I find that this case is not a persuasive authority in support of the Applicant's claim of a reasonable apprehension of bias. The case finds the lack of an explanation for why a seizure was treated as a Level II rather than a Level I was not reasonable. It does not support a claim that any similar decision is an indication of a closed mind or an apprehension of bias.

[82] I have considered the other arguments advanced by the Applicant, and examined the extensive documentary record he submitted in support of his claim. I am not persuaded that any of these claims meet the test for a reasonable apprehension of bias. While a reasonably informed person, viewing the matter realistically and practically – and having thought the matter through – might have some sympathy for the situation that the Applicant finds himself in, I am not satisfied that such a person would attribute this to an apprehension of bias on the part of the officer.

C. *Does the Court have jurisdiction to issue the other related orders requested by the Applicant?*

[83] As I have not found the decision to be unreasonable, and I have dismissed the claim of an apprehension of bias, it is not necessary to address the issue of the other related orders sought by the Applicant.

V. Confidentiality Order

[84] The Applicant indicated at the hearing that he was requesting an order to protect his identity and to seal the court files. He argued that the files contain highly personal information that would expose him and his family to grave risk. As this had not been included in the written representations, the parties were granted time to file further submissions on this matter. These have been considered in the analysis of this question.

[85] The Applicant requested two orders: one to protect his identity, by either referring to him as "Mr. X.," or simply by his last name "Thomas." In addition, he requested an order pursuant to Rules 151 and 152 of the *Federal Court Rules*, SOR/98-106 [*Federal Court Rules*] sealing the Court record and requiring the parties to treat it as confidential.

[86] The basis for the Applicant's request is that the record includes a significant amount of highly personal information, including his name, home address, passport information, a photograph of his family, as well as information about his personal and business banking. He submits that if this information falls into the wrong hands, he and his family would be exposed to serious risks, including possible cyber security concerns. He states that he filed the information he believed was required to provide full disclosure to the Court, but in doing so he had not

realized that it would thereby become accessible as part of the Court record. The Applicant notes that earlier in his life he was subjected to violence and threats because his family owned diamond producing lands, and that as a diamond merchant he remains at risk.

[87] The Applicant submits that the decision in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 [*Sierra Club*] provides that confidentiality orders can be granted, and he submits that the protection of his privacy is necessary to prevent serious risk to his privacy rights, which are protected by the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 and the *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*]. He notes that section 45 of the *Privacy Act* requires the Court to take all reasonable measures to avoid the disclosure of personal information that would otherwise be exempt from disclosure. He points to his personal experience as a child when his family was targeted for owning land rich in diamonds and says that this vindicates the factors to be satisfied as set out in *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835.

[88] The Applicant identified significant portions of the record in this proceeding, including documents that refer to his name, address, and business name, as well as other documents that include these details plus information regarding his passport, business registration details, his e-mail address, and some that include electronic money transfer instructions. Further, the Applicant seeks a similar order in relation to the record from Court File T-655-12, the action he filed to challenge the seizure and penalty.

[89] The Respondent submits that the Applicant has not provided a legal or factual basis to support confidentiality or sealing orders, and notes that he is seeking to remove from the public record documents that have been part of the Court file for seven years, in the case of the action

challenging the seizure and penalty. The material the Applicant seeks to protect includes documents he personally filed, material filed in various procedural motions brought by both parties, and virtually the entire Certified Tribunal Record.

[90] The Respondent argues that some of the material included in the Applicant's request should be removed from the Court record because it is inadmissible, in particular material he filed that was not before the decision-maker. However, the Respondent submits that the Applicant has not satisfied the stringent test to justify confidentiality or sealing orders set out in *Sierra Club* at paragraph 53, which provides that an order under Rule 151 should only be granted when:

> …
>
> (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[91] The Respondent contends that the Applicant has failed to provide any evidence of an objective, actual and serious risk to his own or his family's safety. In view of the fact that the information he seeks to protect in this case has been in the public domain for several years, the Applicant has failed to provide a reasonable explanation for his delay in seeking such an order, nor has he indicated that the availability of this information has given rise to any threats or negative consequences for the Applicant or his family. The concerns he expresses are based on speculation rather than evidence. Finally, the Respondent submits that section 45 of the *Privacy*

Act has no application, and instead the disclosure of the information in the Court file falls within paragraphs 8(2)(c) and (d) of that law, which permit disclosure of personal information for the purposes of legal proceedings and complying with the rules of court regarding production of information.

[92] I am not persuaded that the orders sought by the Applicant should be granted in this case. The starting point is the important public interest in open and accessible court proceedings, and recognition that confidentiality orders are the exception to that rule which should be reserved for exceptional circumstances based on a solid evidentiary foundation from which the appropriate inferences of risk of harm can be drawn (*Sierra Club* at paras 53-54). It is also imperative to consider whether there are other reasonable alternative measures available to protect the confidentiality of the information (*Sierra Club* at paras 53-57).

[93] The Applicant seeks an order that would both protect his identity from disclosure (by replacing his name in the style of cause and reasons with "Mr. X.,") and that would seal the record in regard to a significant portion of the material that has been filed with the Court. He bases this on a number of arguments: that it is necessary to protect himself and his family, and that as a diamond merchant he is particularly vulnerable; that if his personal information gets into the wrong hands, he will face a risk of cyber attack or identity theft; and, that if the allegations against him become known his "lifetime achievements will be tainted."

[94] In support of this, he has filed a personal affidavit, attesting to these concerns, and a number of newspaper articles describing attacks against diamond merchants, mainly in the United States. I do not find that this is the type of evidence that permits a reasonable inference of a serious threat of real harm. Among other things, the Applicant has not demonstrated that he has

taken steps to protect any of this information from disclosure in Australia – for example by shielding his connection to his business, or having an unlisted telephone number. I do not doubt that anyone involved in the diamond trade has a legitimate interest in protecting their personal security, given the value of the merchandise. However, absent more specific and compelling evidence, this is not a basis to make a confidentiality order under Rule 151.

[95] I agree with the submissions of the Respondent that section 45 of the *Privacy Act* does not apply in this case.

[96] I am also persuaded by the Respondent's submission that a significant portion of the material the Applicant seeks to protect should be removed from the Court record because it is inadmissible, and I will grant that Order. However, I am not satisfied that any other confidentiality order or an order to anonymize the style of cause is warranted on the evidence before me.

[97] I therefore order that the material identified in Appendix A of these reasons is to be removed from the Court record. No other order as to confidentiality is granted.

VI. Conclusion

[98] For the reasons set out above, the application for judicial review is dismissed, and the motion for a confidentiality is dismissed. The material identified in Appendix A is to be removed from the Court record because it is inadmissible on an application for judicial review.

[99] The Applicant and Respondent both sought their costs. In the general course, costs will follow the result, and the Respondent has submitted a draft Bill of Costs calculated in accordance

with Column III of the Tariff, amounting to $3,700. The Respondent notes that both parties brought a number of procedural motions in this matter, and that it would be in the interests of justice simply to order a specific amount of costs rather than having them assessed.

[100] The Court has a very wide discretion under Rule 400 of the *Federal Court Rules* in regard to costs. In this case, I have considered a number of factors, including: the result, the importance and complexity of the matter, the conduct of both parties including the number of procedural motions that were brought – including motions to pre-empt the hearing of the matter brought by the Respondent which had the effect of lengthening the proceedings, the fact that the Applicant represented himself, and also the fact that the Applicant made a number of serious claims against the individual officer involved in this matter, which claims were not supported by evidence and were dismissed in their entirety.

[101] In assessing all of these factors, I have decided not to award any costs in this matter. Each party shall bear its own costs.

JUDGMENT in T-491-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The motion for a confidentiality order under Rule 151 is dismissed.

3. The material identified in Appendix A of these reasons is to be removed from the Court record.

4. No costs are awarded.

"William F. Pentney"
Judge

APPENDIX A

Applicant's affidavit, dated April 26, 2017:

Paragraphs 37-45, 55, 57, 58, 60, 61, 64, 65, 68-75, 78-80, 89, 91, 93-104, 107, 108 and 110-112.

Applicant's record, dated July 22, 2018, being exhibits to the Applicant's affidavit:

Pages J7-J12, J50, K3-K14, K21-K41, K54-K60 and K88-K94.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-491-17
STYLE OF CAUSE:	TAMBA THOMAS v MINISTER FOR PUBLIC SAFETY AND EMERGENCY PREPAREDNESS (MPSEP)
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	APRIL 8, 2019
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	FEBRUARY 24, 2020

APPEARANCES:

Tamba Thomas	ON HIS OWN BEHALF
Émilie Tremblay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Montreal, Québec	FOR THE RESPONDENT